

Genesee Avenue to State Highway 274 (Balboa Avenue); then southwest along State Highway 274 (Balboa Avenue) to Clairemont Drive; then southwest along Clairemont Drive to Interstate Highway 5; then south along Interstate Highway 5 to Sea World Drive; then southwest along Sea World Drive to Sunset Cliffs Boulevard; then southwest along Sunset Cliffs Boulevard to West Point Loma Boulevard; then northwest along West Point Loma Boulevard to Voltaire Street; then west along Voltaire Street to the Pacific Ocean coastline; then north along the Pacific Ocean coastline to Scripps Pier; then east along an imaginary line to the intersection of Biological Grade and La Jolla Shores Drive; then northeast along La Jolla Shores Drive to North Torrey Pines; then south along North Torrey Pines to the point of beginning.

[56 FR 57576, Nov. 13, 1991; 56 FR 63550, Dec. 4, 1991, as amended at 61 FR 31004, June 19, 1996; 62 FR 33538, June 20, 1997; 62 FR 36977, July 10, 1997; 62 FR 43271, Aug. 13, 1997; 62 FR 47556, Sept. 10, 1997; 62 FR 53225, Oct. 14, 1997; 62 FR 54572, 54574, Oct. 21, 1997; 62 FR 61898, Nov. 20, 1997; 63 FR 19652, Apr. 21, 1998; 63 FR 44541, Aug. 20, 1998; 63 FR 44776, Aug. 21, 1998; 63 FR 54038, Oct. 8, 1998; 63 FR 66000, Dec. 1, 1998]

§ 301.78-4 Conditions governing the interstate movement of regulated articles from quarantined areas.

Any regulated article may be moved interstate from a quarantined area² only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.78-5 and 301.78-8 of this subpart;

(b) Without a certificate or limited permit, if:

(1) The regulated article is moving as air cargo or as a meal intended for in-flight consumption, and is transiting Los Angeles International Airport, California;

(2) The regulated article originated outside the quarantined area and is either moved in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by Mediterranean fruit flies (such as canvas, plastic, or other closely woven cloth) while moving through the quarantined area; and

²Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

(3) The point of origin of the regulated article is indicated on the waybill.

(c) Without a certificate or limited permit, if:

(1) The regulated article originated outside any quarantined area and is moved through (without stopping except for refueling, or for traffic conditions, such as traffic lights or stop signs) the quarantined area in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by Mediterranean fruit flies (such as canvas, plastic, or other closely woven cloth) while moving through the quarantined area; and

(2) The point of origin of the regulated article is indicated on the waybill, and the enclosed vehicle or the enclosure that contains the regulated article is not opened, unpacked, or unloaded in the quarantined area.

(d) Without a certificate or limited permit if the regulated article is moved:

(1) By the United States Department of Agriculture for experimental or scientific purposes;

(2) Pursuant to a permit issued by the Administrator for the regulated article;

(3) Under conditions specified on the permit and found by the Administrator to be adequate to prevent the spread of Mediterranean fruit fly; and

(4) With a tag or label bearing the number of the permit issued for the regulated article attached to the outside of the container of the regulated article or attached to the regulated article itself if not in a container. (Approved by the Office of Management and Budget under control number 0579-0088)

[56 FR 57576, Nov. 13, 1991, as amended at 57 FR 54169, Nov. 17, 1992]

§ 301.78-5 Issuance and cancellation of certificates and limited permits.

(a) A certificate shall be issued by an inspector³ for the interstate movement

³Services of an inspector may be requested by contacting local offices of Plant Protection and Quarantine, which are listed in telephone directories. The addresses and telephone numbers of local offices may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and

of a regulated article if the inspector determines that:

(1)(i) The regulated article has been treated under the direction of an inspector in accordance with §301.78-10 of this subpart; or

(ii) Based on inspection of the premises of origin, that the premises are free from the Mediterranean fruit fly; or

(iii) Based on inspection of the regulated article, that it is free of Mediterranean fruit fly; and

(2) The regulated article will be moved through the quarantined area in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by Mediterranean fruit fly; and

(3) The regulated article is to be moved in compliance with any additional emergency conditions the Administrator may impose, under section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd),⁴ to prevent the spread of the Mediterranean fruit fly; and

(4) The regulated articles is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated articles.

(b) An inspector⁵ will issue a limited permit for the interstate movement of a regulated article if the inspector determines that—

(1) The regulated article is to be moved interstate to a specified destination for specified handling, processing, or utilization (the destination and other conditions to be listed in the limited permit), and this interstate movement will not result in the spread of the Mediterranean fruit fly because life stages of the Mediterranean fruit fly will be destroyed by the specified handling, processing, or utilization;

(2) The regulated article is to be moved in compliance with any additional emergency conditions the Administrator may impose, under section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd), to prevent the spread of the Mediterranean fruit fly; and

(3) The regulated article is eligible for interstate movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(c) Certificates and limited permits for use for interstate movement of regulated articles may be issued by an inspector or person operating under a compliance agreement. A person operating under a compliance agreement may issue a certificate for the interstate movement of a regulated article if an inspector has determined that the regulated article is otherwise eligible for a certificate in accordance with paragraph (a) of this section. A person operating under a compliance agreement may issue a limited permit for interstate movement of a regulated article when an inspector has determined that the regulated article is eligible for a limited permit in accordance with paragraph (b) of this section.

(d) Any certificate or limited permit that has been issued may be withdrawn by an inspector orally or in writing, if he or she determines that the holder of the certificate or limited permit has not complied with all conditions under this subpart for the use of the certificate or limited permit. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal shall be confirmed in writing as promptly as circumstances allow. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a

Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737-1236.

⁴Section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd) provides that the Secretary of Agriculture may—under certain conditions—seize, quarantine, treat, destroy, or apply other remedial measures to articles that the Administrator has reason to believe are infested or infected by or contain plant pests.

⁵See footnote 3 to §301.78-5(a).

hearing will be adopted by the Administrator.

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[56 FR 57576, Nov. 13, 1991, as amended at 59 FR 67608, Dec. 30, 1994]

§301.78-6 Compliance agreements and cancellation.

(a) Any person engaged in growing, handling, or moving regulated articles may enter into a compliance agreement when an inspector determines that the person understands this subpart.⁶

(b) Any compliance agreement may be canceled orally or in writing by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation shall be confirmed in writing as promptly as circumstances allow. Any person whose compliance agreement has been canceled may appeal the decision, in writing, within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

[56 FR 57576, Nov. 13, 1991, as amended at 59 FR 67609, Dec. 30, 1994]

§301.78-7 Assembly and inspection of regulated articles.

(a) Any person (other than a person authorized to issue certificates or limited permits under §301.78-5(c)), who

⁶Compliance agreement forms are available without charge from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737-1236, and from local offices of the Plant Protection and Quarantine, which are listed in telephone directories.

desires to move a regulated article interstate accompanied by a certificate or limited permit must notify an inspector,⁷ as far in advance of the desired interstate movement as possible (but no less than 48 hours before the desired interstate movement).

(b) The regulated article must be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

§301.78-8 Attachment and disposition of certificates and limited permits.

(a) A certificate or limited permit required for the interstate movement of a regulated article, at all times during the interstate movement, must be attached to the outside of the container containing the regulated article, attached to the regulated article itself if not in a container, or attached to the consignee's copy of the accompanying waybill: *Provided however*, that the requirements of this section may be met by attaching the certificate or limited permit to the consignee's copy of the waybill only if the regulated article is sufficiently described on the certificate or limited permit and on the waybill to identify the regulated article.

(b) The certificate or limited permit for the interstate movement of a regulated article must be furnished by the carrier to the consignee at the destination of the regulated article.

(Approved by the Office of Management and Budget under control number 0579-0088)

§301.78-9 Costs and charges.

The services of the inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays) will be furnished without cost. The user will be responsible for all costs and charges arising from inspection and other services provided outside of normal business hours.

§301.78-10 Treatments.

Treatment schedules listed in the Plant Protection and Quarantine Treatment Manual to destroy Mediterranean fruit fly are authorized for use on regulated articles. The Plant Protection and Quarantine Treatment Manual is incorporated by reference.

⁷See footnote 3 to §301.78-5(a).